

1. The Order Remanding Appeal to Examiner dated 11 May 2009 questions whether claims 10-16 and 24-27 meet the requirements of being a patent eligible process under 35 U.S.C. §101 in light of the memorandum entitled "Clarification of "processes" under 35 U.S.C. §101" issued on 15 May 2008 by the Deputy Commissioner for Patent Examining Policy, John J. Love and *In re Bilski*, No. 2007-1130, \_\_F.3d\_\_, 2008 WL 4757110 (Fed. Cir. Oct. 30, 2008). However, the Examiner does not believe that the claims are statutory under 35 U.S.C. §101.

2. Claims 10-16 recite "a meta predictor", which, even as a software process, needs to execute on a processor with hardware. The "meta predictor" inherently generates a misprediction value on hardware, since the "meta predictor" cannot generate the misprediction value without being part of a hardware processor.

3. Claims 24-27 explicitly recite a base misprediction history register and a branch predictor history register. It is commonly accepted in the art that registers are hardware elements, and the exemplary embodiment of the invention show hardware registers. Therefore, it is assumed that "register" refers to a hardware element.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AIMEE J. LI whose telephone number is (571)272-4169. The examiner can normally be reached on M-T 7:00am-4:30pm.

5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Chan can be reached on (571) 272-4162. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aimee J Li/  
Primary Examiner, Art Unit 2183

27 May 2009